This is clearly supported by the specification e.g. at page 1, ln. 19. Thus claim 15 now properly limits the options of claim 14 to "oligofructose".

Claims 1-3 and 20 have been rejected under 35 U.S.C. § 102(a) as being anticipated by Hoek et al. (WO 98/02049). It is the Examiner's position that Hoek et al. disclose a dipeptide sweetener in water, an edible sweetening acid and a water soluble polysaccharide, protein or lipid. The exemplified dipeptide is aspartame and examples of the water soluble polysaccaride are cellulose, methyl cellulose or hydroxymethyl cellulose. It is held that at low pH values cellulose is broken down to glucose units which inherently would serve to sweeten the beverage.

This rejection is respectfully traversed for the following reasons:

Claim 1 as amended reads on a beverage comprising water, an edible acid, a peptide sweetener and an oligosaccharide selected from inulins, oligofructose and fructans. None of the polysaccharides mentioned in Hoek et al. are inulins, oligofructose or fructans. Moreover, it should be emphasized that Applicant's invention includes an edible acid. The composition according to Hoek et al. does not include an acid. Hoek et al use a dipeptide sweetener which is a salt of an aspartic acid-based sweetener and a derivative of a sweetening acid. Thus it is a salt wherein one of its (ionic) parts is a derivative of an acid. Therefore, what has been employed by Hoek et al is a salt and not an acid. This making it even clearer that Hoek et al. does not anticipate the present invention.

Page 10 of Hoek et al. does not add anything which would be more pertinent than what has been referred to above. The statement that the suspension of Hoek et al. is rendered stable at low pH, whereas in the prior art compositions "aspartame ... is susceptible to accelerated decomposition in connection with low pH environment" has nothing to do with Applicant's invention. The fact that aspartame decomposes at low pH was known to the Inventors and in fact the present invention does not do anything against the decomposition of aspartame. Contrary to the suggestions in the prior art, which all more or less deal with stabilization or

reduction of the decomposition of aspartame, the present invention uses the effect of the low pH to also decompose oligosaccharides yielding in sweet monomers which then in turn compensate for the fading sweetness of the decomposing aspartame.

Claims 1-20 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Mitchel, and Wiedmann et al. in view of the combination of Yatka et al. and Nakel et al. It is held that Mitchel states that aspartame becomes unstable under acidic conditions, and that Mitchels compositions interact synergistically to stabilize the functional groups of these peptide sweeteners, thus providing for "improved shelf-life and stability of aspartame". Mitchels compositions comprise inulin and aspartame. Yatka et al. Disclose the fact that oligofructose stabilizes aspartame in chewing gum.

This rejection is traversed. As already outlined above the object of the present invention was not to stabilize aspartame or to slow down its decomposition. The object of the present invention was to compensate for the fading sweetness of a peptide sweetener. This compensation is triggered by the same condition which causes the fading: the low pH environment. While at the beginning the sweetness is determined by the peptide sweetener (the oligosaccharide's contribution to sweetness is comparatively low) with increasing storage time the increasing amount of monomer from the decomposed oligosaccharide compensates for the loss of sweetness from the decomposed peptide sweetener. The oligosaccharides according to present claim 1 are selected such that they nearly exactly match the sweetness loss of the decomposing peptide sweetener time-wise and sweetness-wise.

This concept is mentioned in none of the cited prior art documents. They either try to stabilize or reduce the peptide decomposition (Mitchel, Yatka et al.) or just disclose various sweetener compositions or beverage supplements (Wiedmann et al., Nakel et al.).

Mitchel discloses heat stabilization of aspartame. Inulin is just mentioned as being contained in the employed chicory. There is no disclosure of a beverage, containing an

edible acid, let alone a disclosure or hint towards the compensation principle of the present invention.

Yatka et al. disclose an oligofructose containing chewing gum composition in which the aspartame decomposes at least 5% less than in a composition which does not contain the oligofructose. Again, there is no disclosure of a beverage, containing an edible acid, nor a motivation to use a combination of an acid, a peptide sweetener and certain oligosaccharides to compensate a fading peptide sweetness.

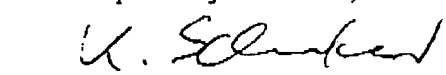
Wiedmann et al. disclose various sweetener compositions and Nakel et al. teach the production of beverage supplements with calcium. They both can and do not compensate for the deficiencies in the primary references.

A three month extension of time is being filed simultaneously with this amendment. Please charge the $920.00 fee to Deposit Account 502193.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned **"Version With Markings To Show Changes Made"**.

In view of the foregoing amendment and these remarks, this application is now believed to be in condition for allowance, and such favorable action is respectfully requested on behalf of Applicants.

Respectfully submitted,



Klaus Schweitzer
(See attached Limited Recognition Form)
ProPat, L.L.C.
2912 Crosby Road
Charlotte, North Carolina 28211
Telephone: (704) 365-4881 Fax: (704) 365-4851

VERSION WITH MARKINGS TO SHOW CHANGES MADE

Claims 1 and 14 have been amended as follows:

1. (Twice amended) An acidified beverage comprising:
   (a) water;
   (b) an edible acid component present in an amount suitable to maintain the pH of the beverage in the range of from about 3 up to less than about 6;
   (c) at least one high intensity peptide sweetener; and
   (d) a water-soluble oligosaccharide fiber which undergoes at least partial hydrolysis within about 4 weeks at ambient conditions within the aforesaid pH range and the hydrolyzed units of which sweeten said beverage; and which oligosaccharide is selected from the group consisting of inulins, oligofructose and fructans.

14. (Twice amended) An acidified beverage comprising:
   (a) water;
   (b) a flavor component selected from the group consisting of tea flavor and cola flavor;
   (c) an edible acid component present in an amount suitable to maintain the pH of the beverage in the range of from about 3 to about 4;
   (d) at least one high intensity sweetener composition;
   (e) a water-soluble oligosaccharide fiber selected from the group consisting of inulins, oligofructose and fructans, said inulins, oligofructose and fructans having a caloric value of less than about 5Kcal/g.